

1 COURT REPORTER:

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3 515 Rusk, Room 8004
4 Houston, Texas 77002
5 Tel: 713-250-5087

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1 MR. HUDSON: Good morning, Your Honor, my
2 apologies, I was sitting in the courtroom. I wasn't
3 aware --

09:14:40

4 THE COURT: Tell me about this person you
5 brought with you.

6 MR. HUDSON: Joe Galvan, he's general counsel
7 with the A&M System. He is my client contact.

8 THE COURT: Does he wear socks like those?

09:14:53

9 MR. HUDSON: No, sir. Only -- only us fancy
10 lawyers up in Austin do, sir.

11 THE COURT: He is the general counsel of what
12 exactly?

13 MR. HUDSON: Of Texas A&M System.

14 THE COURT: The whole thing?

09:15:03

15 MR. HUDSON: No, not the whole thing, Your
16 Honor. He's assistant general counsel.

17 THE COURT: Well, he's got some kind of
18 assignment, for sports injuries, or --

09:15:16

19 MR. HUDSON: I believe he does, for lack of a
20 better phrase, a general practice there with the A&M
21 System, but his specialty, as I understand it, is
22 with areas involving medical claims.

23 THE COURT: All right. Go get him.

24 MR. HUDSON: Yes, sir.

09:15:30

25 THE COURT: Good morning, Mr. Galvan.

1 MR. GALVAN: Joe Galvan.

2 THE COURT: Sorry about the glitch. We thought

3 you were just an ordinary bureaucrat. You're worse.

4 You're a bureaucrat with a law degree, which I guess to a

09:17:01

5 large extent so am I.

6 All right. Mr. Henslee.

7 MR. HENSLEE: Yes, sir.

8 THE COURT: Do they have Mr. Shaikh --

9 MR. HENSLEE: Shaikh.

09:17:19

10 THE COURT: Shaikh. Do they have his medical

11 records through all -- all of his medical records through

12 all of this, and antecedent to? So he is about 25 or so?

13 MR. HENSLEE: He's a little older than that

14 now. I think he is 28.

09:17:38

15 THE COURT: Okay. So, let's have him give you

16 a list of every doctor he's seen, and I want -- the word

17 "doctor" includes priests, faith healers, gurus, anybody

18 he's gone to, the psychologists who aren't real, family

19 therapists, anybody from whom he has ever sought medical

09:18:17

20 care in that broad sense.

21 MR. HENSLEE: Sure.

22 THE COURT: Mental, physical. The year, for

23 what, who the doctor was, if he remembers. He can probably

24 remember where, of course, he is not that old. He doesn't

09:18:35

25 have a lot to remember like mature and responsible people.

1 Because even though there was a tumor, we
2 have no idea what the ground state was.

3 What is he doing for a living now?

09:19:02

4 MR. HENSLEE: He is -- he's doing some lab
5 work.

6 THE COURT: For whom?

7 MR. HENSLEE: You know, I don't know the name
8 of the company he is doing lab work for.

09:19:10

9 THE COURT: We need his entire employment
10 history and that includes academic history.

11 MR. HENSLEE: Yes, sir.

12 THE COURT: So if the he is a full-time student
13 somewhere at some point for the last -- since he got out of
14 high school.

09:19:20

15 MR. HENSLEE: Yes, sir.

16 THE COURT: And he needs to keep a record of
17 every place he -- reconstruct it, if he hasn't done it,
18 every place he has applied for academic performance or
19 employment.

09:19:53

20 It's my understanding for the disability,
21 the only legitimate defendant would be the university, the
22 employer, the school.

23 MR. HENSLEE: Yes, sir.

09:20:15

24 THE COURT: Not this fellow Young. What does
25 he do there?

1 MR. GALVAN: He's the president.

2 THE COURT: Speak up.

3 MR. GALVAN: He is the president, Texas A&M.

4 THE COURT: This is not some cloistered

09:20:22

5 academic environment where everybody speaks in whispers

6 less they be held accountable for something.

7 She's got to hear. Don't put this on the
8 record.

9 (Discussion off the record.)

09:21:02

10 THE COURT: We can go back on the record. So,

11 we also will need some detailed background on all these

12 people of yours who are mentioned in the complaint. Is

13 there some student health service people? Whoever these

14 people were, psychologists, or counselors, or whatever, get

09:21:48

15 their -- show you -- I want the curriculum vitae.

16 MR. HUDSON: Yes, Your Honor.

17 THE COURT: Which is probably not good Latin
18 pronunciation.

19 MR. HUDSON: I understand what you're getting

09:21:56

20 at, Your Honor.

21 THE COURT: I don't know why using "resume" is
22 not enough, except maybe it's a French word and people
23 don't want to use it. So we can just call it their brief
24 autobiography.

09:22:10

25 MR. HUDSON: Yes, sir, we will get that.

1 THE COURT: With no comment about the case. We
2 just need to have the data.

3 Mr. Galvan, the hard part of cases is the
4 facts, not the law. You can look the law up. I can't go
09:22:30 5 look up what happened at A&M, whenever this was.

6 Now, in paragraph 19, you say, on the step
7 one, on November 29th, 2012, did not pass due to the
8 ongoing and undiagnosed health challenges. Actually, he
9 didn't pass because he didn't make a passing score. In the
09:22:56 10 time allotted --

11 MR. HENSLEE: Yes, sir.

12 THE COURT: -- he did not answer the questions
13 correctly. He assumes that it was because of his health.

14 MR. HENSLEE: Yes, sir.

09:23:07 15 THE COURT: Just make sure of that.

16 In 2012, he would have been 25 or six,
17 somewhere in there?

18 MR. HENSLEE: That's about right.

19 THE COURT: Okay. The scary thing is that all
09:23:35 20 these students at A&M are presumptively adults.
21 Frightening, isn't it?

22 MR. HENSLEE: Yes.

23 THE COURT: And I -- not just A&M, all of them.
24 I have a U.T. degree. I didn't know any better at the
09:23:55 25 time, but I'll just tell you I am fond of A&M. Some, gosh,

1 almost 20 years ago, they called and said, would you like
2 to teach at our campus in Tuscany this summer? I said,
3 Yes. They said, don't you want to know what we want you to
4 teach? No. By summer I'll know enough to fake it.

09:24:39

5 What exactly was the malpractice of
6 Dr. Brown?

7 MR. HENSLEE: Dr. Brown did not order any kind
8 of tests whatever.

9 THE COURT: Have you seen the records?

09:24:51

10 MR. HENSLEE: I have seen everything my client
11 has given me.

12 THE COURT: No, that's not my question.

13 MR. HENSLEE: Yes, sir.

09:24:59

14 THE COURT: You need to look at all the
15 records. Clients, sometimes, and you have probably learned
16 this dealing with bureaucratic clients, don't give you the
17 good stuff. I mean, they think it's the bad stuff, but
18 it's the stuff that we need. So, they're going to give you
19 everything about his treatment. And you need to measure
20 that against what your client gave you about it.

09:25:20

21 MR. HUDSON: Just one point on that, Your
22 Honor. Dr. Brown was not an actual employee of the A&M
23 System, and we don't have any access to the medical
24 records.

09:25:35

25 THE COURT: Get them from him.

1 MR. HUDSON: From Mr. Brown?

2 THE COURT: Yes. You're the organ grinder. He
3 was the monkey. Get them. You-all sent him there. Does
4 he still consult, or whatever?

09:25:54

5 MR. HUDSON: It is my understanding he
6 currently lives in Lake Charles, and we haven't been in
7 contact with him.

09:26:11

8 THE COURT: That's what the petition says.
9 Maybe he's working on the psychology of gambling. But he
10 will give them to you. If he won't, one line order saying
11 Dr. Brown will not cooperate, and I'll do an order for you
12 to issue a subpoena to him.

13 MR. HUDSON: Yes, Your Honor.

09:26:27

14 THE COURT: That is in Louisiana. You will
15 have to go do something in Louisiana.

16 MR. HUDSON: We will reach out to him.

17 THE COURT: Is it true that there was a block
18 on his academic records, that he couldn't get them?

19 MR. HUDSON: That was --

09:26:51

20 MR. GALVAN: It was --

21 THE COURT: That's a yes or no.

22 MR. GALVAN: I don't know, sir. I don't know.
23 That --

24 THE COURT: Did you-all read this?

09:27:00

25 MR. GALVAN: Yes, Your Honor.

1 MR. HUDSON: Yes, sir.

2 THE COURT: I have.

3 MR. GALVAN: The Health Science Center was --
4 became a part of Texas A&M University. They were merged.

09:27:10 5 And so one of the things that moved over was --

6 THE COURT: That's the sneaky way to get into
7 the Houston market for students.

8 MR. GALVAN: So the big university now runs all
9 the student services for the Health Science Center.

09:27:24 10 THE COURT: I don't care who does it. They are
11 your people.

12 MR. GALVAN: Yes, sir.

13 THE COURT: That's a simple factual allegation
14 that there was a block on his records and he could not get
09:27:39 15 them. I don't know whether that's true, but should have
16 checked it before now. You want me to go up there to
17 metropolitan Bryan and rummage around through the records?

18 MR. HUDSON: No, Your Honor, we will take care
19 of that.

09:27:55 20 THE COURT: I didn't think so. I'm not sure
21 what student business services is. Sounds like another
22 vague multiword label that -- do you know what that section
23 does?

24 MR. GALVAN: I believe they handle all of
09:28:23 25 the --

1 THE COURT: Speak up.

2 MR. GALVAN: They handle all of the student
3 affairs, you know, like --

4 THE COURT: Student affairs?

09:28:29

5 MR. GALVAN: -- registration.

6 THE COURT: They would have been busy when I
7 was in college. I had a lot of affairs, in my mind mostly.

8 MR. GALVAN: Scheduling, handling the records,
9 that sort of thing.

09:28:47

10 THE COURT: You couldn't just call it student
11 records? No. Because the title -- you know, there is a
12 rule in the world: The longer the title, the weaker the
13 position. And similarly, the more complicated
14 institutional title, the less likely it is to be effective.

09:29:15

15 The Department of Defense does a pretty good job. The
16 Department of Homeland Security, on the other hand, doesn't
17 know what it's doing.

18 Have you sent him the endocrinology
19 records that you quote here?

09:30:12

20 MR. HENSLEE: No, sir.

21 THE COURT: Well, let's get them to them.

22 I don't -- if this guy told him to take
23 the step one, again, when he was not a student, and that
24 was, in fact, not possible, he's a medical student. He's
25 not in the fourth grade where somebody needs to tell him

09:30:45

1 each step. He is supposed to know what he has to do to get
2 out.

3 Are you licensed in Texas?

4 MR. GALVAN: Yes, sir.

09:30:59

5 THE COURT: Did you study here?

6 MR. GALVAN: Yes, sir.

7 THE COURT: Do they still make you do the
8 declaration of intent to study law? They don't know.

09:31:12

9 They're law students, the two -- the young ones. The old
10 one is not.

11 MR. GALVAN: They didn't.

12 THE COURT: I actually read the book and it
13 said you had to file this declaration. I hope they
14 cancelled it. So it was basically, you know, your life

09:31:24

15 history and whether you had ever been -- it was a security
16 check is what it was, see if you were -- they didn't want
17 you to invest all that money in a fine education and find
18 out you couldn't be admitted to the bar because you were a
19 crook.

09:31:36

20 And so I did it. And you would be
21 surprised about the number of my friends in their third
22 year, you're supposed to do it like within four months or
23 something, scrambling around. They couldn't take the bar
24 until they filed that. My favorite part -- well, there are
25 so many bad bar stories, but after doing that and then

09:31:53

1 doing the second one, when it comes around for taking the
2 bar, they clear you for all that, they wouldn't take your
3 check for the test fee.

4 Just got to love bureaucrats, don't you?

09:32:16

5 All right. We are pretty clear that A&M
6 is part of Texas, aren't we?

7 MR. HUDSON: That's our position, Your Honor.

8 THE COURT: Fl on his computer is sovereign
9 immunity, sovereign immunity, sovereign immunity.

09:32:40

10 And what accommodation did Mr. Shaikh
11 apply for formally?

12 MR. HENSLEE: He did not apply formally for the
13 accommodation under 504, or the IDEA, because he only
14 became aware of it --

09:32:59

15 THE COURT: No, he didn't do it.

16 MR. HENSLEE: Yes, sir. Yes, sir.

17 THE COURT: Step in the process that employers
18 are entitled to so they know exactly what you're claiming
19 as a disability, and they can evaluate it. They don't have
20 to say, somebody since they're disabled --

09:33:13

21 MR. HENSLEE: Yes, sir. He would be --

22 THE COURT: I had a law clerk who was disabled.
23 He was allergic to work.

24 You say any decision related to dismissal

09:33:48

25 must be careful and deliberate. It must not be irrational.

1 If it required the governments to be reasonable, they would
2 all just have to close up shop. It can be close, like with
3 Heynard (phonetic).

09:34:19

4 Tell me the class-of-one theory. I,
5 frankly, never heard of that. What is the class-of-one
6 theory?

09:34:33

7 MR. HENSLEE: When -- just before I came to
8 this meeting, I called Marty Cirkiel, who drafted the --
9 who drafted this to ask him that very question. He's
10 arguing before the Fifth Circuit this morning, and --

11 THE COURT: Well, good for them.

12 MR. HENSLEE: Yes.

13 THE COURT: But what is it?

14 MR. HENSLEE: I do not know.

09:34:49

15 THE COURT: It makes no sense. I know
16 something about the Constitution. One is clearly not a
17 class, just like one can't be a conspiracy, and all those
18 other things, it just -- I had a person the other day who
19 was an estate and a person, but whichever entity you picked
20 on, he would switch to the other one. It made no sense.

09:35:15

21 So don't even try. It will hurt your brain. It's one of
22 those tax terrorists ploys where American money is not real
23 money except when they want it, you know, in the petition
24 they wanted American dollars, but they said that their
25 obligation to pay in American dollars wasn't real because

09:35:42

1 it is not real money.

2 In drafting these he doesn't do his
3 clients any favor by endlessly repeating not operative
4 facts, but minutia, and he's got medical negligence,
09:36:18 5 common-law negligence, gross negligence. What's wrong with
6 negligence? Medical negligence is just negligence. The
7 question is the standard you apply. You apply the care of
8 a professional livery stable for horses higher than you do
9 the little old lady down the street where you board your
09:36:42 10 horse. We don't have a horse negligence.

11 These damages go on for a page, and at
12 this point the plaintiff knows how much his tuition and
13 expenses that he wants reimbursed are. You can just hint
14 about that. And he wants a million dollars just for the
09:37:22 15 violation of his constitutional rights.

16 You know, that might be a better system,
17 but you actually have to have damages to be compensated for
18 them. And there is no such thing as a legal theory of
19 injunctive relief. There is no cause of action. It has to
09:37:43 20 be attendant to something.

21 So we have got 81, 83, disability, medical
22 malpractice, and on that one, has -- have you done all the
23 prerequisites under Texas law for medical malpractice which
24 I don't know, but --

09:38:10 25 MR. HENSLEE: I -- I believe that we have.

1 THE COURT: He says he hasn't gotten all the
2 notices and stuff.

3 MR. HUDSON: We haven't received anything
4 pursuant to Chapter 74 of the Texas Civil Practice.

09:38:22

5 THE COURT: Speak up. Are you catching it from
6 him?

7 MR. HUDSON: I think so, Your Honor, it spreads
8 from College Station over to Austin quite often.

09:38:32

9 We haven't received any notice pursuant to
10 Civil Practice and Remedies Code Chapter 74.

11 THE COURT: And does that include the medical
12 report?

13 MR. HUDSON: That would include the initial
14 report, yes, Your Honor.

09:38:45

15 THE COURT: And I didn't go back and read the
16 first complaint. I thought this was plenty bad enough.

17 Just a lot of fluff in there, and I
18 couldn't tell by reading it, the way the facts are just
19 jumbled, and there is lots of trivia and lots of insults.

09:39:17

20 Once you identify Brown as an agent of
21 A&M, you don't have to say TAMU Dr. Brown every time you
22 say it. Like there is only one Brown in there. Wouldn't
23 even call him Dr. Brown. Just I use surnames for everybody
24 and that way everybody's feelings are hurt.

09:39:37

25 And have you read this motion to dismiss?

1 MR. HENSLEE: Yes, I have read it.

2 Mr. Cirkiel --

3 THE COURT: It's F2. It is not F1.

4 MR. HENSLEE: Yes. Mr. Cirkiel is actually

09:39:53

5 handling the response to the subsequent motion that we

6 filed based on our amended pleading, I assume.

7 THE COURT: Is there an amended motion to

8 dismiss?

9 MR. HUDSON: There will be, Your Honor. The

09:40:06

10 Court granted, as you know, the motion for leave to amend

11 the complaint.

12 THE COURT: Doesn't all these things still

13 apply to that complaint?

14 MR. HUDSON: Well, we haven't responded to the

09:40:17

15 medical malpractice claim. We also haven't responded to

16 the class-of-one theory.

17 THE COURT: How are you going to look that up?

18 Go on Bing and just type in "class of one" and see what it

19 says? I don't -- believe me, I don't know everything about

09:40:32

20 the law, but I think I would have noticed a constitutional

21 provision like that.

22 MR. HUDSON: Well, I am certainly not going to

23 argue with the Court, if the Court is not interested in

24 carrying on with that theory.

09:40:43

25 THE COURT: It is not a theory because it is

1 not factually explained about how he's a class of one, and
2 he has got plenty of law in there that doesn't belong
3 there, but at least he could give us a hint what this legal
4 theory -- he is one. But a class? He may have class, but
5 he's not a class. So, I --

09:41:08

6 You may file a response, a motion to
7 dismiss to the amended one, or you can file a supplemental
8 one just on the medical malpractice, depending entirely on
9 what you think is in the best interest of your client.

09:41:37

10 MR. HUDSON: Is there a preference that the
11 Court would have as to how to handle that?

12 THE COURT: The fewer words from you the better
13 would be my general rule.

09:41:45

14 MR. HUDSON: Yes, Your Honor. I have read the
15 Court's standard motion.

16 THE COURT: I have studied that, because I
17 don't know what they are going -- but if you're comfortable
18 with this on the original claims, you just want to add the
19 doctor, just if you thought better of it, if he has finally
20 told you some stuff that helps you, then, you decide. You
21 don't have to decide right now.

09:42:03

22 MR. HUDSON: Yes, Your Honor. Thank you.

23 THE COURT: When can you do it?

24 MR. HUDSON: It's my understanding that we had
25 14 days from the grant of the motion for leave. I can get

09:42:13

1 it done by the end of next week, Your Honor.

2 THE COURT: I don't know why I gave you that
3 much time.

4 So the end of next week is the 17th.

09:42:33

5 MR. HUDSON: Yes, Your Honor.

6 THE COURT: And can you reply on the 24th?

7 MR. HENSLEE: Yes, sir.

8 THE COURT: Has there been any conversations
9 with the other lawyer, Mr. Cirkiel?

09:43:03

10 MR. HUDSON: I have spoken to Mr. Cirkiel. I
11 have also spoken to -- I don't want to butcher her last
12 name.

13 MR. HENSLEE: Odediran.

09:43:17

14 MR. HUDSON: -- Ms. Odediran. I have spoken
15 with both of them. But, yes, Your Honor, I have spoken
16 with both of them.

17 THE COURT: Any progress?

18 MR. HUDSON: In terms of?

09:43:32

19 THE COURT: I don't know. I don't know what
20 your client hopes for, reasonably.

21 MR. HUDSON: We have exchanged initial
22 disclosures at this point, Your Honor. We would like to
23 see a ruling from the Court on the motion to dismiss to
24 figure out what claims, if any, will remain after the
25 Court's had a chance to consider everything. At that

09:43:46

1 point, you know, we would better be able to evaluate how to
2 proceed.

3 THE COURT: Well, after I rule -- I don't, of
4 course, have any idea what I am going to rule, but then we
09:44:04 5 are going to really get busy quickly. We are going to move
6 this along. I don't know whether you have noticed this,
7 but cases don't get better the longer they sit.

8 Anything else this morning we can usefully
9 do?

09:44:26 10 MR. HUDSON: Not from us, Your Honor.

11 MR. HENSLEE: Not from us, Your Honor.

12 THE COURT: Is there anything he forgot to say
13 that you thought he should say?

14 MR. GALVAN: No, Your Honor.

09:44:39 15 THE COURT: Okay. Produce that stuff I told
16 you.

17 MR. HUDSON: Yes, Your Honor.

18 THE COURT: And if in the process you come by
19 something similar, give it to him.

09:44:53 20 MR. HUDSON: Yes, Your Honor. Thank you.

21 THE COURT: Going to figure it out at some
22 point.

23 (Concluded at 9:44 a.m.)

24

25

1 COURT REPORTER'S CERTIFICATE

2
3 I, Kathleen K. Miller, certify that the foregoing is a
4 correct transcript from the record of proceedings in the
5 above-entitled matter.

6
7 /s/_____

8 DATE: June 24, 2016 Kathleen K. Miller, RPR, RMR, CRR